



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## RESEARCH APPENDIX -

**PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Appendix A ... Part 01 of 04

Date Transfer Requested: 01/23/2006 (Per: RCT)



The 2005 drafting file for  
LRB-1287 (transferred)  
LRB-1288 (transferred)  
LRB-1290 (transferred)  
LRB-1390 (transferred)  
where used to create ...



**LRB 05-3740**

The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as an appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

## 2005 DRAFTING REQUEST

### Bill

Received: 12/17/2004

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Carol Roessler (608) 266-5300

By/Representing: Karen Asbjornson

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - env. cleanup

Extra Copies:

Submit via email: YES

Requester's email: Sen.Roessler@legis.state.wi.us

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Brownfields, changes to voluntary party liability exemption

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 12/20/2004	lkunkel 12/21/2004		_____			State
/1			pgreensl 12/22/2004	_____	sbasford 12/22/2004		State
/2	btradewe 03/18/2005	kfollett 03/18/2005	jfrantze 03/18/2005	_____	mbarman 03/18/2005		

FE Sent For:

**<END>**

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/?	btradewe 12/20/2004	lkunkel 12/21/2004		_____			State
/1		<i>12/18</i> 3/18	pgreensl 12/22/2004	_____	sbasford 12/22/2004		

FE Sent For:

*3/18* *RS*  
3/18  
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/?	btradewe	lmk 12/21	Df /21 PG	12/22 PG/RS			

FE Sent For:

<END>



12-16-04

Becky,

Enclosed are brownfield initiatives (some new - some old) that need to be drafted into one bill (package).

Please call me or Darsi Foss (7-6713) at DNK if you have any questions.

Thank you for your assistance!

Happy Holidays!

Karen Ashpkinson  
Office of Senator  
Roessler

**Recommended Changes to Wisconsin Statutes  
By the Brownfields Study Group**

TOPIC	Draft Language	RECOMMENDATION	Agencies
1. Modify Negotiated Sale In Lieu Of Bidding For Tax Delinquent Brownfields Properties	LRB #03-3314/1	Create a statutory amendment to s.75.69(2), Wis. Stats., that would allow a county or city of the first class to transfer tax delinquent property it owns, without using the competitive bidding process, if environmental pollution is present and the property meets the definition of a brownfield under s.292.75(1)(a), Wis. Stats.	Revenue DNR
2. Assign Judgment Of A Tax Deed Without Taking Title	LRB# 03-1315/1	-allow a county to execute a tax deed under s.75.14(1), Wis. Stats., to an individual under the same conditions as prescribed under s.75.106, Wis. Stats.; -allow the individual who has elected to accept a tax deed under the above conditions to commence an action to bar former owners under s.75.39, Wis. Stats.	Revenue DNR
3. Adoption of Federal Brownfields Tax Deduction into State Tax Code	No, need new bill/draft	Adopt the federal brownfields tax deduction for cleanup costs associated with non-petroleum contamination	Revenue DNR
4. Changes to Voluntary Party Liability Exemption statute, s. 292.15: <ul style="list-style-type: none"> <li>• Eliminate Interim Liability Exemption for Voluntary Parties – (292.15(2)(at))</li> <li>• Natural Attenuation at Voluntary Party Sites - clarify</li> <li>• Expand definition of landfills that may receive the VPLE.</li> </ul>	LRB# 03-3316	-The first change would eliminate the need for the department to create an insurance mechanism for voluntary parties at the time their site investigation is approved. -The second change provides the department access to a property if natural attenuation has or is suspected to have failed, once a Certificate has been issued. -Presently, only landfills that are not municipal solid waste sites may obtain a VPLE certificate. Expand this to include wider universe of landfills	Revenue DNR
5. Local Government Liability Exemption for Certain Types of Solid Waste Sites	LRB# 03-1318/1	This change provides that a local governmental unit that is exempt from the clean-up requirements for a property is also exempt from solid waste management standards and other legal requirements relating to solid waste for that property. This would not apply to licensed or approved facilities, nor a facility where the local government caused the contamination.	DNR
6. Streamline the Land Recycling Loan Program (LRLP)	LRB# 03-3324	-Eliminate the use of the Intent to Apply (ITA) form, and the December 31 deadline associated with it -direct financing for Phase I and II environmental assessments, and site investigations.	DNR DOA

WCF

**Recommended Changes to Wisconsin Statutes  
By the Brownfields Study Group**

TOPIC	Draft Language	RECOMMENDATION	Agencies
<p>7. Modify the Environmental Remediation TIF statute, s. 66.1106, Stats.</p>	<p>LRB# 03-3347/1</p>	<ul style="list-style-type: none"> <li>-include delinquent taxes as an eligible cost.</li> <li>-extend the ER TIF time period from 16 to 23 years</li> <li>-adopt the technical changes proposed by Revenue in the FY 2001-03 executive budget and AB 510.</li> <li>- makes changes retroactive to existing ER TIFs</li> </ul>	<p>DOR DNR</p>
<p>8. Language to clarify that certain inspection, engineering, repair and monitoring conditions placed on a property by the DNR, Commerce or DATCP at the completion of an environmental clean up are enforceable and run with the land once placed.</p>	<p>Not yet. Bill drafting language is attached.</p>	<ul style="list-style-type: none"> <li>- Clarify that the DNR, Commerce and DATCP have the authority to require that environmental conditions be placed on a property, in accordance with clean up rules and agency approvals.</li> <li>- Clarify that DNR can enforce that requirement.</li> <li>- Clarify that the deed restriction runs with the land.</li> <li>- Clarify they will be tracked in DNR's GIS Registry and that a fee is required to place the property on the Registry.</li> </ul>	<p>DATCP DNR Commerce</p>

4. Changes to the Voluntary Party Liability Exemption – s. 292.15, Wis.Stats.

(a) Eliminate section 292.15(2)(at) concerning insurance for discharges discovered after the site investigation is approved, as proposed in LRB 3316/1.

✓ (b) Changes to the Voluntary Party Liability Exemption, s. 292.15 – access changes to Natural Attenuation, s. 292.15(2)(a)(4) - LRB – 3316/1

- Section 1: Add the words “or controls” – “If the voluntary party owns or controls the property.....” The DNR could see situations when the VP has a controlling lease or other agreement to control the property but doesn’t own it and they would have ability to grant access. This is consistent with language that was added to VPLE statute related to responsibility to maintain site (see s. 292.15(2)(a)(4))

✓ (c) New change to Voluntary Liability Exemption, s. 292.15(2)(d). Redefine the type of “waste facilities or sites” (i.e., landfills) that may be eligible to participate in and receive a Certificate of Completion (No bill draft available)

The Brownfields Study Group is recommending that the type of landfills that are eligible to participate in and receive a Certificate of Completion be changed to allow only solid waste facilities that have never received a license or been approved per s. 289.31, Wis.Stats.

Amend s. 292.15(2)(d) as follows:

*(2)(d) This subsection does not apply to a municipal waste landfill, as defined in s. 289.01(22), or to an approved facility solid waste facility for which a license has been issued pursuant to s. 289.31, or a predecessor statute.*

Further, the statute should be changed to provide that a non-licensed landfill is eligible for the VPLE if it does not currently require methane treatment, leachate collection, groundwater monitoring or other active treatment systems to be maintained or monitored in order to ensure that the environment is restored to the extent practicable and that the harmful effects of the discharge of hazardous substances to the air, land or waters of this state are minimized.

*“The exemption under this subsection is not available to a voluntary party that is cleaning up any other solid waste facility or waste site until all active treatment, including but not limited to methane monitoring, leachate collection or groundwater monitoring, is completed (although the exemption would be available to a voluntary party that is conducting groundwater monitoring as part of a natural attenuation remedy).”*

In addition, for clarity purposes, it may be prudent to repeal section 292.15(2)(d) and create 292.15(7)(d), in order to consolidate all the “exceptions” to VPLE site eligibility into one, rather than two, subsections.

#4

VPLE

## **Issue: Remove Interim Liability Protection Language**

### ***Background***

This issue was included in the first Brownfields Study Group Report (please see pp. 62-63, *1999 Brownfields Study Group Final Report*). Under the Voluntary Party Liability Exemption (VPLE) process, s.292.15, Wis. Stats., DNR staff provide a party with a Certificate of Completion (COC) after they have successfully remediated the property. However, prior to the 1999-2001 State Biennial Budget, the liability exemption process did not provide "interim" liability protection during the period between the approval of the investigation and the issuance of a COC.

Voluntary parties, therefore, were not protected from liability by the State of Wisconsin for additional contamination that could be discovered during the remediation. During the discussion by the 1998 Study Group, some members expressed concern that this lack of interim protection created an impediment for redevelopment in cases where the remediation takes several years to complete.

The first Study Group recommended that a statutory liability protection be created, and the 1999-2001 State Budget (s.292.15(at), Wis. Stats.) addressed this issue. Under this statute, qualified parties can obtain interim liability protection where the DNR has approved a site investigation and those parties have agreed to implement a remediation approved by the department. The statute also states that parties would need to obtain environmental insurance to cover the cost to investigate and cleanup any contamination that may be discovered in the course of conducting the cleanup of the property.

### ***Proposal***

The Study Group recommends the repeal of s.292.15(2)(at), Wis. Stats., and removal of any other references to this statutory section.

There is currently a greater availability of insurance products and more flexibility insurance products than when the first Brownfields Study Group met in 1998. The Study Group believes that, since there are currently private insurance products available to address this interim risk, it is unnecessary for there to be an interim liability protection provided by state statute. A bureaucratic regulatory solution should be avoided when a private solution is available.

In addition, the Study Group also believes it is an unnecessary expenditure of effort for the state to implement this insurance program given that it may not be utilized and individuals can address this risk without state involvement.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***

## **Issue: Voluntary Party Liability Exemption – Clarify Access In The Use of Natural Attenuation**

### ***Background***

The first Brownfields Study Group (please see pp. 68-69 of the *1999 Brownfields Study Group Final Report*) recommended a statutory change to allow voluntary parties to obtain the liability exemption if they are using natural attenuation. Under this statute [s.292.15(2)(ae), Wis. Stats.], the DNR may require the voluntary party to obtain environmental insurance to cover the cost of cleanup in case natural attenuation fails.

The DNR is required to promulgate rules which will describe the specific conditions to obtain this insurance. Once this rule is promulgated, a voluntary party using natural attenuation who obtains the necessary insurance will receive a Certificate of Completion (COC). If it is discovered that natural attenuation failed after the COC has been issued, then an insurance claim would need to be filed to pay for the necessary cleanup actions. The current statute does not explicitly provide access to the property for the DNR or the parties responsible for the contamination to conduct these cleanup actions.

### ***Proposal***

A statutory change to s.292.15(2)(ae), Wis. Stats., should be made to require the voluntary party who currently owns the property to allow the DNR, a responsible party and any of their authorized representatives access to enter the property to take actions necessary to determine if natural attenuation has failed and to respond to the discharge in the event that natural attenuation has failed.

### ***Type of Change***

Statutory

### ***Resources***

None

### ***Comments***



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3316/1  
RCT:kjf&kmg:jf



003 BILL

OFF 19 2003

~~A copy of this draft was  
e-mailed to your office.~~

1     **AN ACT to repeal** 292.15 (2) (at) and 292.15 (6) (b); **to renumber** 292.15 (6) (a);  
2           **to amend** 292.15 (2) (c), 292.15 (2) (e) and 292.15 (3); and **to create** 292.15 (2)  
3           (ae) 7. and 292.15 (2) (b) 5. of the statutes; **relating to:** the liability of certain  
4           persons for environmental contamination on property on which a cleanup has  
5           been conducted.

---

*Analysis by the Legislative Reference Bureau*

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Under current law, a person, called a voluntary party, who applies for a liability exemption is exempt from absolute requirements to restore the environment and minimize the harmful effects of a discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, except with respect to a substance in groundwater that the Department of Natural Resources (DNR) determines will naturally attenuate, DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge except with respect to the substance that DNR has determined will naturally attenuate, the voluntary party maintains and monitors the property as required by DNR, and, if required by DNR, the voluntary party obtains insurance to cover the costs of cleanup if natural attenuation fails.

**BILL**

This bill provides that, to qualify for the liability exemption for property on which DNR determines that natural attenuation will successfully complete the cleanup, a voluntary party who owns the property must provide access to the property for the purpose of determining whether natural attenuation has failed and, if so, to allow someone else to clean up the property.

Also, under current law, a voluntary party is exempt from liability with respect to the existence of a hazardous substance on property if the hazardous substance is discovered in the course of a cleanup and if the voluntary party has obtained insurance to cover the costs of cleaning up hazardous substances discovered in the course of the cleanup. This bill eliminates this exemption from liability.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 292.15 (2) (ae) 7. of the statutes is created to read:

2           292.15 (2) (ae) 7. If the voluntary party owns the property, the voluntary party  
3 allows the department, any authorized representative of the department, a  
4 representative of a company that has issued insurance required under subd. 3m.,  
5 any party that possessed or controlled the hazardous substance or caused the  
6 discharge of the hazardous substance, and any consultant or contractor of any of  
7 those persons to enter the property to determine whether natural attenuation has  
8 failed and to take action to respond to the discharge if natural attenuation has failed.

9           **SECTION 2.** 292.15 (2) (at) of the statutes is repealed.

10          **SECTION 3.** 292.15 (2) (b) 5. of the statutes is created to read:

11          292.15 (2) (b) 5. If the voluntary party does not own or control the property, the  
12 person who owns or controls the property fails to allow the department, any  
13 authorized representative of the department, any representative of a company that  
14 has issued insurance required under par. (ae) 3m., any party that possessed or  
15 controlled the hazardous substance or caused the discharge of the hazardous

**BILL**

1 substance, or any consultant or contractor of any of those persons to enter the  
2 property to determine whether natural attenuation has failed and to take action to  
3 respond to the discharge if natural attenuation has failed.

4 **SECTION 4.** 292.15 (2) (c) of the statutes is amended to read:

5 292.15 (2) (c) *Prohibition on action.* The department of justice may not  
6 commence an action under 42 USC 9607 against any voluntary party meeting the  
7 criteria of this subsection to recover costs for which the voluntary party is exempt  
8 under pars. (a), (ae), (ag), (am), ~~(at)~~ and (b).

9 **SECTION 5.** 292.15 (2) (e) of the statutes is amended to read:

10 292.15 (2) (e) *Contract with insurer.* If the department requires insurance  
11 under par. (ae) 3m. ~~or (at) 3.~~, the department may contract with an insurer to provide  
12 insurance required under par. (ae) 3m. ~~or (at) 3.~~ and may require voluntary parties  
13 to obtain coverage under the contract.

14 **SECTION 6.** 292.15 (3) of the statutes is amended to read:

15 292.15 (3) **SUCCESSORS AND ASSIGNS.** An exemption provided in sub. (2) applies  
16 to any successor or assignee of the voluntary party if the successor or assignee  
17 complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. ~~and 5.~~ and 7. and,  
18 if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the  
19 voluntary party except that the exemption in sub. (2) does not apply if the successor  
20 or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag) 2. or (am) was  
21 obtained by any of the means or under any of the circumstances specified in sub. (2)  
22 (a) 6.

23 **SECTION 7.** 292.15 (6) (a) of the statutes is renumbered 292.15 (6).

24 **SECTION 8.** 292.15 (6) (b) of the statutes is repealed.

25 (END)

lnk

2005 2003 BILL

D/Note

regenerate

LPS: P&FW

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 2 *to amend* 292.15 (2) (c), 292.15 (2) (e) and 292.15 (3); and *to create* 292.15 (2)  
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 4 persons for environmental contamination on property on which a cleanup has  
 5 been conducted. ✓

**Analysis by the Legislative Reference Bureau**

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. ✓ Under current law, a person, called a voluntary party, who applies for a liability exemption is exempt from absolute requirements to restore the environment and minimize the harmful effects of a discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, ~~except with respect to a substance in groundwater that the Department of Natural Resources (DNR) determines will naturally attenuate,~~ DNR certifies that the cleanup restored the environment and minimized the harmful effects of the discharge ~~except with respect to the substance that DNR has determined will naturally attenuate,~~ the voluntary party maintains and monitors the property as required by DNR, and, if required by DNR, the voluntary party obtains insurance to cover the costs of cleanup if natural attenuation fails. ✓

Analysis Insert I

in case

**BILL**

*Analysis  
insert #2*

*In addition*  
This bill provides that, to qualify for the liability exemption for property on which DNR determines that natural attenuation will successfully complete the cleanup, a voluntary party who owns the property must provide access to the property for the purpose of determining whether natural attenuation has failed and, if so, to allow someone else to clean up the property.

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**BILL**

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(END)

DNote

24  
Insert  
3-24  
25

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-1287/1ins  
RCT.....

**Analysis insert 1**

. Also, under current law, the voluntary party liability exemption is available even if the cleanup does not get rid of a substance in groundwater as long as DNR determines that the substance will naturally break down (attenuate)

**Analysis insert 2**

Under current law, the voluntary party liability exemption is not available for most sites at which solid waste was disposed of. This bill narrows that exemption so that it only solid waste facilities that were once licensed by DNR are excluded from the exemption.

**Insert 3-8**

SECTION 1. 292.15 (2) (d) of the statutes is repealed. ✓

**Insert 3-24**

SECTION 2. 292.15 (7) (d) of the statutes is created to read:

292.15 (7) (d) A solid waste facility that was licensed under s. 289.30 or s. 144.44, 1993 stats. ✓

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1287/1dn  
RCT: *lark*

*(date)*

This is a draft of the proposal relating to the voluntary party liability exemption. ✓

The instructions for this draft said to include language stating that the exemption is not available to a party that is cleaning up a solid waste facility or a waste site until all active treatment is completed. ✓ I did not add that language because to be eligible for the exemption in the first place, the environment must be restored to the extent practicable and DNR must provide a certificate of completion indicating that the environment has been restored. ✓ It does not seem as though DNR could issue such a certificate until active treatment is completed.

✓ Please let me know if you have any questions about the draft.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1287/1dn  
RCT:lmk:pg

December 21, 2004

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Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

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FROM THE  
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LRB-1287/1dn  
RCT:lmk:pg

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Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

## **Tradewell, Becky**

---

**From:** Asbjornson, Karen  
**Sent:** Thursday, March 10, 2005 12:28 PM  
**To:** Tradewell, Becky  
**Cc:** Foss, Darsi J  
**Subject:** Re: LRB 1287/1

Hi Becky,

Senator Roessler/DNR has some changes to the LRB 1287/1 draft. I will be forwarding more draft changes shortly. However, this draft (LRB 1287) is of higher importance.

Here are the changes needed:

### **LRB - 1287/1 - Voluntary Party Liability Exemption (VPLE)**

The DNR, on behalf of the Study Group, would like to offer the following suggestions to best meet the intent of this group's recommendations. These comments have been approved by Linda Meyer, Dan Graff and Judy Ohm in DNR's Bureau for Legal Services.

*Amend: "292.15 (7)(d) A solid waste facility that was licensed under s. 289.31 or s. 144.44, 1993 Stats, ~~and~~ or any predecessor statute."*

Note: In the above paragraph, the DNR recommends using s. 289.31, not 289.30 as the reference in par. (d). The phrase "or any predecessor statute" was recommended given all the numerous times our state landfill and solid waste laws have been amended.

*Create: "292.15 (7)(e) A solid waste facility or waste site at which active remedial operation or treatment is required, including but not limited to facilities or sites where methane or groundwater monitoring, or gas, leachate or groundwater collection or treatment is required."*

#### **Reason DNR believes that par. (e) is needed:**

The need for the creation of s. 292.15 (7) (e) is necessary based on how the DNR has defined "restoration to the extent practicable" in ch. NR 726 for solid waste facilities. Solid waste facilities may be granted "closure" of hazardous substance discharge cases by DNR under ch. NR 726, if they meet the performance standard conditions established in that rule. This means that a landfill may be "closed" under the Spill Law, via ch. NR 726, and be transferred from the Remediation and Redevelopment program's jurisdiction to the Waste program's jurisdiction for long-term oversight once the active part of the cleanup is done, even though the conditions of the closure include active methane venting/treatment, groundwater monitoring, etc. So, the DNR has defined "restoration to the extent practicable" for landfills in ch. NR 726, to include case closure with active, on-going engineered remediation systems in some cases. From a public policy perspective, those types of sites should receive "case closure," but not a Certificate of Completion. That is why we are asking for the statutory clarification to exclude those types of sites from receiving a certificate of completion.

Could we get these changes and a /2 back next week? If you have any questions or concerns this week, it's probably best to call Darsi Foss, DNR, at 267-6713.

Thanks!

## Tradewell, Becky

---

**To:** Foss, Darsi J  
**Cc:** Asbjornson, Karen  
**Subject:** FW: Re: LRB 1287/1

Darsi,

I have received the redraft instructions for LRB-1287/1 from Karen Asbjornson.

I am confused by the explanation of the need for proposed s. 292.15 (7) (e). The explanation indicates that certain sites should receive "case closure" but not a certificate of completion. Under s. 292.15 (2) (a) 3., a certificate of completion is a prerequisite to eligibility for the voluntary party liability exemption. Creating s. 292.15 (7) (e) would not change whether DNR could issue a certificate of completion. It would prevent a site that had received a certificate of completion from being eligible for the voluntary party liability exemption. If the kinds of sites that are of concern do not qualify for a certificate of completion under current law, they are not eligible for the exemption. If they are eligible for a certificate of completion under current law, should the draft change the criteria for issuing a certificate of completion so that they are no longer eligible? I do not see the relevance of the fact that jurisdiction over these sites moves from one part of DNR to another.

Regarding adding "or any predecessor statute" to proposed s. 292.15 (7) (d): State landfill licensing was introduced by chapter 83, laws of 1967. The landfill licensing statute was always s. 144.44 until the restructuring of the environmental statutes by 1995 Wis. Act 227 when it became s. 289.31 (sorry about my typo in LRB-1287/1). I assume that the concern is that a party would say something like "My land with a former landfill qualifies for the liability exemption under s. 292.15 notwithstanding the exception in s. 292.15 (7) (d) because the landfill was licensed under s. 144.44 in 1980 and s. 144.44 was amended in 1985." (Please let me know if I am misunderstanding the concern.) I have never heard of that being a problem with a law that uses a cross-reference in the form "s. xxxx, 19zz stats." to a statute that no longer exists. This is the form that the LRB always uses and there are hundreds of such references in the statutes. There appears to be only one use of "or any predecessor statute" in the statutes. Is there case law that I am unaware of that is relevant to this issue? My main concern about adding that language here is that it may call into question references to former laws that do not use the language. See s. 281.34 (2), for example. I do not think that any change is necessary, but if that is unacceptable to DNR, I would suggest omitting the numerical cross references completely and using the language "A solid waste facility that was licensed by this state." Otherwise, I suggest referring to "s. 144.44, 1993 stats., including any previous version of that statute" because that seems more clear than referring to a predecessor statute.

Becky Tradewell  
6-7290

-----Original Message-----

**From:** Asbjornson, Karen  
**Sent:** Thursday, March 10, 2005 12:28 PM  
**To:** Tradewell, Becky  
**Cc:** Foss, Darsi J  
**Subject:** Re: LRB 1287/1

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Senator Roessler/DNR has some changes to the LRB 1287/1 draft. I will be forwarding more draft changes shortly. However, this draft (LRB 1287) is of higher importance.

Here are the changes needed:

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The DNR, on behalf of the Study Group, would like to offer the following suggestions to best meet the intent of this group's recommendations. These comments have been approved by Linda Meyer, Dan Graff and Judy Ohm in DNR's Bureau for Legal Services.

Amend: *"292.15 (7)(d) A solid waste facility that was licensed under s. 289.31 or s. 144.44, 1993 Stats, ~~and~~ or any predecessor statute."*

Note: In the above paragraph, the DNR recommends using s. 289.31, not 289.30 as the reference in par. (d). The phrase "or any predecessor statute" was recommended given all the numerous times our state landfill and solid waste laws have been amended.

Create: *"292.15 (7)(e) A solid waste facility or waste site at which active remedial operation or treatment is required, including but not limited to facilities or sites where methane or groundwater monitoring, or gas, leachate or groundwater collection or treatment is required."*

Reason DNR believes that par. (e) is needed:

The need for the creation of s. 292.15 (7) (e) is necessary based on how the DNR has defined "restoration to the extent practicable" in ch. NR 726 for solid waste facilities. Solid waste facilities may be granted "closure" of hazardous substance discharge cases by DNR under ch. NR 726, if they meet the performance standard conditions established in that rule. This means that a landfill may be "closed" under the Spill Law, via ch. NR 726, and be transferred from the Remediation and Redevelopment program's jurisdiction to the Waste program's jurisdiction for long-term oversight once the active part of the cleanup is done, even though the conditions of the closure include active methane venting/treatment, groundwater monitoring, etc. So, the DNR has defined "restoration to the extent practicable" for landfills in ch. NR 726, to include case closure with active, on-going engineered remediation systems in some cases. From a public policy perspective, those types of sites should receive "case closure," but not a Certificate of Completion. That is why we are asking for the statutory clarification to exclude those types of sites from receiving a certificate of completion.

Could we get these changes and a /2 back next week? If you have any questions or concerns this week, it's probably best to call Darsi Foss, DNR, at 267-6713.

Thanks!

Karen Asbjornson  
Office of Senator Carol Roessler  
608-266-5300/1-888-736-8720  
Karen.Asbjornson@legis.state.wi.us

**Tradewell, Becky**

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**From:** Foss, Darsi J  
**Sent:** Friday, March 11, 2005 9:37 AM  
**To:** Tradewell, Becky  
**Subject:** RE: Re: LRB 1287/1  
**Importance:** High

Becky

Thank you for looking at this so quickly. I hope to have a response to your questions and comments by Monday afternoon. I have to consult with our attorneys and the Waste program. Have a good weekend.

---

Darsi Foss, Chief  
Brownfields and Outreach Section  
Bureau for Remediation and Redevelopment  
Wisconsin Department of Natural Resources  
(☎) phone: (608) 267-6713  
(☎) fax: (608) 267 - 7646  
(✉) e-mail: [darsi.foss@dnr.state.wi.us](mailto:darsi.foss@dnr.state.wi.us)  
<http://www.dnr.state.wi.us/org/aw/rr>

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**From:** Tradewell, Becky [<mailto:Becky.Tradewell@legis.state.wi.us>]  
**Sent:**

3/18/05 Per Judy Ohm - Darci is convinced that proposed  
s. 292.15(7)(e) is needed because they "close" solid waste  
facilities before all treatment and monitoring is completed.  
This only means that jurisdiction is transferred to the  
Waste Program. Darci points to NR 726.02(2)

RT

Today, if possible

↓  
EKJF

**2005 BILL**

DNote

regenerate  
↓

1 **AN ACT to repeal** 292.15 (2) (at), 292.15 (2) (d) and 292.15 (6) (b); **to renumber**  
 2 292.15 (6) (a); **to amend** 292.15 (2) (c), 292.15 (2) (e) and 292.15 (3); and **to**  
 3 **create** 292.15 (2) (ae) 7., 292.15 (2) (b) 5. and 292.15 (7) (d) of the statutes;  
 4 **relating to:** the liability of certain persons for environmental contamination  
 5 on property on which a cleanup has been conducted.

***Analysis by the Legislative Reference Bureau***

Current law generally requires a person who possesses or controls a hazardous substance that is discharged or who causes the discharge of a hazardous substance to restore the environment to the extent practicable and to minimize the harmful effects of the discharge on the environment. Under current law, a person, called a voluntary party, who applies for a liability exemption is exempt from absolute requirements to restore the environment and minimize the harmful effects of a discharge, and from the requirements of other laws relating to hazardous substances, if an environmental investigation of the property is conducted, the property is cleaned up, the Department of Natural Resources (DNR) certifies that the cleanup restored the environment and minimized the harmful effects of the discharge, and the voluntary party maintains and monitors the property as required by DNR. Also, under current law, the voluntary party liability exemption is available even if the cleanup does not get rid of a substance in groundwater as long as DNR determines that the substance will naturally break down (attenuate) and, if required by DNR, the voluntary party obtains insurance to cover the costs of cleanup in case natural attenuation fails.

**BILL**

Under current law, the voluntary party liability exemption is not available for most sites at which solid waste was disposed of. This bill narrows that exemption so that it only solid waste facilities that were once licensed by DNR are excluded from the exemption.

In addition this bill provides that, to qualify for the liability exemption for property on which DNR determines that natural attenuation will successfully complete the cleanup, a voluntary party who owns the property must provide access to the property for the purpose of determining whether natural attenuation has failed and, if so, to allow someone else to clean up the property.

Also, under current law, a voluntary party is exempt from liability with respect to the existence of a hazardous substance on property if the hazardous substance is discovered in the course of a cleanup and if the voluntary party has obtained insurance to cover the costs of cleaning up hazardous substances discovered in the course of the cleanup. This bill eliminates this exemption from liability.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 292.15 (2) (ae) 7. of the statutes is created to read:

2           292.15 (2) (ae) 7. If the voluntary party owns or controls the property, the  
3 voluntary party allows the department, any authorized representative of the  
4 department, a representative of a company that has issued insurance required under  
5 subd. 3m., any party that possessed or controlled the hazardous substance or caused  
6 the discharge of the hazardous substance, and any consultant or contractor of any  
7 of those persons to enter the property to determine whether natural attenuation has  
8 failed and to take action to respond to the discharge if natural attenuation has failed.

9           **SECTION 2.** 292.15 (2) (at) of the statutes is repealed.

10          **SECTION 3.** 292.15 (2) (b) 5. of the statutes is created to read:

11          292.15 (2) (b) 5. If the voluntary party does not own or control the property, the  
12 person who owns or controls the property fails to allow the department, any  
13 authorized representative of the department, any representative of a company that

**BILL**

1 has issued insurance required under par. (ae) 3m., any party that possessed or  
2 controlled the hazardous substance or caused the discharge of the hazardous  
3 substance, or any consultant or contractor of any of those persons to enter the  
4 property to determine whether natural attenuation has failed and to take action to  
5 respond to the discharge if natural attenuation has failed.

6 **SECTION 4.** 292.15 (2) (c) of the statutes is amended to read:

7 292.15 (2) (c) *Prohibition on action.* The department of justice may not  
8 commence an action under 42 USC 9607 against any voluntary party meeting the  
9 criteria of this subsection to recover costs for which the voluntary party is exempt  
10 under pars. (a), (ae), (ag), (am), ~~(at)~~ and (b).

11 **SECTION 5.** 292.15 (2) (d) of the statutes is repealed.

12 **SECTION 6.** 292.15 (2) (e) of the statutes is amended to read:

13 292.15 (2) (e) *Contract with insurer.* If the department requires insurance  
14 under par. (ae) 3m. ~~or (at) 3.~~, the department may contract with an insurer to provide  
15 insurance required under par. (ae) 3m. ~~or (at) 3.~~ and may require voluntary parties  
16 to obtain coverage under the contract.

17 **SECTION 7.** 292.15 (3) of the statutes is amended to read:

18 292.15 (3) **SUCCESSORS AND ASSIGNS.** An exemption provided in sub. (2) applies  
19 to any successor or assignee of the voluntary party if the successor or assignee  
20 complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. ~~and~~ 5., and 7. and,  
21 if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the  
22 voluntary party except that the exemption in sub. (2) does not apply if the successor  
23 or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag) 2. or (am) was  
24 obtained by any of the means or under any of the circumstances specified in sub. (2)  
25 (a) 6.

**BILL**

- 1           **SECTION 8.** 292.15 (6) (a) of the statutes is renumbered 292.15 (6).
- 2           **SECTION 9.** 292.15 (6) (b) of the statutes is repealed.
- 3           **SECTION 10.** 292.15 (7) (d) of the statutes is created to read:
- 4           292.15 (7) (d) A solid waste facility that was licensed under s. 289.30 or s.
- 5           144.44, 1993 stats.

6

(END)

*Insert 4-5*

*D-Note*

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1287/2ins  
RCT:.....

**Insert 4-5**

**SECTION 1.** <sup>#</sup> 292.15 (7) (e) of the statutes is created to read:

292.15 (7) (e) A solid waste facility or waste site at which active remedial operation or treatment is required, including a site or facility where methane or groundwater monitoring or gas, leachate, or groundwater collection or treatment is required.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1287/2dn

RCT.:... *kjf*

*Date*

Karen Asbjornson:

This is the redraft of the draft making changes relating to the voluntary party liability exemption. DNR decided that the requested change to proposed s. 292.15 (7) (d) was not necessary.

This redraft adds proposed s. 292.15 (7) (e) at DNR's direction. This provision specifies that solid waste facilities and waste sites at which active remediation is continuing are not eligible for the voluntary party liability exemption. I believe that this provision is unnecessary and may cause problems if enacted. Under s. 292.15, a party is only eligible for the liability exemption if the environment has been satisfactorily restored to the extent practicable and the harmful effects from the discharge are minimized in accordance with DNR's rules. DNR must issue a certificate of completion stating that the environment has been restored to the extent practicable and that the harmful effects from the discharge have been minimized. I do not see how these conditions can be met if ~~active~~ remediation is ongoing. *remedial operation or treatment*

\* *(2)(a)*

\* DNR's position is, as I understand it, that these conditions cannot be met if active remediation is ongoing at a site other than a solid waste site or facility, but they can be met if the site is a solid waste site or facility. There is no basis in the statutes for different kinds of sites being treated differently in determining whether these conditions are met. DNR indicates that its rules in ch. NR 726 define "restoration to the extent practicable" differently for solid waste facilities than for other sites. I cannot see that in the rules. Apparently, DNR's practice is to move jurisdiction over solid waste facilities from the Remediation and Redevelopment Program to the Waste Program's jurisdiction before all remedial actions and monitoring are complete. This does not seem to be a justification for saying that the conditions in s. 292.15 are met if they are in fact not met. Nor does it seem to be a basis on which a person could claim the voluntary party liability exemption for a solid waste site or facility at which active remediation is continuing. *treatment* *(2)(a)* *eligibility for*

\* *(2)(a)*

The danger in adding this language is that a person whose site is not a solid waste site or facility may claim to be eligible for the voluntary party liability exemption before all remedial treatment and monitoring are completed because s. 292.15 (7) (e) does not apply to the person's site or facility. If solid waste sites or facilities would be eligible for the exemption in the absence of this provision, then other sites must be eligible because this provision does not apply to them.

I would recommend deleting proposed s. 292.15 (7) (e). If that is not done, I suggest that DNR review the provision carefully to ensure that all of the terms that it uses are consistent with the terms in the rest of ch. 292 and accurately ~~cover~~ what DNR intends to ~~cover~~.  
*convey*  
*convey*

Please let me know if you have any questions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1287/2dn  
RCT:kjf:jf

March 18, 2005

Karen Asbjornson:

This is the redraft of the draft making changes relating to the voluntary party liability exemption. DNR decided that the requested change to proposed s. 292.15 (7) (d) was not necessary.

This redraft adds proposed s. 292.15 (7) (e) at DNR's direction. This provision specifies that solid waste facilities and waste sites at which active remedial operation or treatment is continuing are not eligible for the voluntary party liability exemption. I believe that this provision is unnecessary and may cause problems if enacted. Under s. 292.15 (2) (a), a party is only eligible for the liability exemption if the environment has been satisfactorily restored to the extent practicable and the harmful effects from the discharge are minimized in accordance with DNR's rules. DNR must issue a certificate of completion stating that the environment has been restored to the extent practicable and that the harmful effects from the discharge have been minimized. I do not see how these conditions can be met if remediation is ongoing.

DNR's position is, as I understand it, that these conditions cannot be met if remediation is ongoing at a site other than a solid waste site or facility, but they can be met if the site is a solid waste site or facility. There is no basis in the statutes for different kinds of sites being treated differently in determining whether these conditions are met. DNR indicates that its rules in ch. NR 726 define "restoration to the extent practicable" differently for solid waste facilities than for other sites. I cannot see that in the rules. Apparently, DNR's practice is to move jurisdiction over solid waste facilities from the Remediation and Redevelopment Program to the Waste Program's jurisdiction before all remedial treatment and monitoring are complete. This does not seem to be a justification for saying that the conditions in s. 292.15 (2) (a) are met if they are in fact not met. Nor does it seem to be a basis on which a person could claim eligibility for the voluntary party liability exemption for a solid waste site or facility at which remediation is continuing.

The danger in adding this language is that a person whose site is not a solid waste site or facility may claim to be eligible for the voluntary party liability exemption before all remedial treatment and monitoring are completed because s. 292.15 (7) (e) does not apply to the person's site or facility. If solid waste sites or facilities would be eligible for the exemption in the absence of this provision, then other sites must be eligible because this provision does not apply to them.

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## 2005 BILL

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**BILL**

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6 the discharge of the hazardous substance, and any consultant or contractor of any  
7 of those persons to enter the property to determine whether natural attenuation has  
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**BILL**

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21 if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the  
22 voluntary party except that the exemption in sub. (2) does not apply if the successor  
23 or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag) 2. or (am) was  
24 obtained by any of the means or under any of the circumstances specified in sub. (2)  
25 (a) 6.

